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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/904,182	07/11/2001	Albert C. Lardo	56245	1162
21874 7590 10/05/2007 EDWARDS ANGELL PALMER & DODGE LLP P.O. BOX 55874 BOSTON, MA 02205			EXAMINER SHAY, DAVID M	
			ART UNIT 3735	PAPER NUMBER
			MAIL DATE 10/05/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

09/904,182

Applicant(s)

LARDO ET AL.

Examiner

david shay

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3735

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on August 13, 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 61-67 and 69-84 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 61-67 and 69-84 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

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A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on August 13, 2007 has been entered.

The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Misnumbered claims 68-84 have been renumbered as 68-85. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 61 is rejected under 35 U.S.C. 102(e) as being clearly anticipated by Sinofsky et al.

Claims 62-82 and 84 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sinofsky et al in combination with Swanson. Sinofsky et al teaches employing various methods, including photodynamic therapy to destroy tissue which causes arrhythmias. Swanson teaches that various means can be used to destroy tissue which causes arrhythmias; that determining the tissue to be ablated by stunning the tissue and seeing if the arrhythmia stops; and that various methods may be employed to locate the treatment device at the site. Swanson teaches, in addition to transmitting the energy, which can be laser light through a balloon, a guidance technique, which can include MRI; the energy application, which can include transmission of the

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tissue destroying energy through intervening media in contact with the tissue, to which the energy is essentially transparent; the application to atrial fibrillation; and incorporates by reference U.S. Patent No. 5,636,634, which discloses the infusion of saline or an anticoagulant. It would have been obvious to the artisan of ordinary skill to employ the phototherapeutic treatment of Sinofsky et al in the method of Swanson or to employ the guidance technique of Swanson, which can include MRI; the energy application, which can include transmission of the tissue destroying energy through intervening media in contact with the tissue, to which the energy is essentially transparent; and the application to atrial fibrillation in the method of Sinofsky et al, and to administer the photosensitizer via perfusing the coronary arteries, or by intravenous injection, since these are not critical; do not require site specific administration of the photosensitizer; and provide no unexpected result, thus producing a method such as claimed.

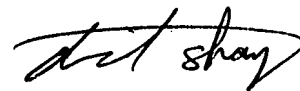
Claim 83 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sinofsky et al in combination with Swanson, as applied to claims 61-63, 78-81, and 83 above, and further in combination with Rice et al. Rice et al teach that phthalocyanines are appropriate photosensitizers. It would have been obvious to the artisan of ordinary skill to employ phthalocyanines as the photosensitizers, since these are effective as photosensitizers and Sinofsky et al teaches no particular photosensitizer, thus producing a method such as claimed.

Applicant's arguments with respect to claim 61-67 and 69-84 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to david shay whose telephone number is (571) 272-4773. The examiner can normally be reached on Tuesday through Friday from 6:30 a.m. to 5:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor, II, can be reached on Monday, Tuesday, Wednesday, Thursday, and Friday. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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